

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VINCENT PACELY,

Plaintiff,

v.

Case No: 1:12-cv-00152

MARK LOCKETT,

Defendant.

NOTICE OF REMOVAL

Defendant Mark Lockett ("Defendant Lockett"), by and through his counsel of record, Allen, Shepherd, Lewis, Syra & Chapman, P.A. (Daniel W. Lewis and Christopher P. Winters), hereby files this Notice of Removal pursuant to 28 U.S.C. § 1441, and in support thereof, states as follows:

1. Plaintiff Vincent Pacely filed his Complaint in the First Judicial District, County of Rio Arriba, State of New Mexico, in Cause No. D-117-CV-2011-00573 on November 29, 2011.
2. Defendant Lockett received a copy of the Summons and Complaint on January 25, 2012. *See* Lockett Affidavit, attached hereto as Exhibit A, at ¶ 15.
3. Defendant Lockett is a citizen and a resident of the State of Arizona.
4. Pursuant to 28 U.S.C. § 1441(b), Defendant Lockett is not a citizen of New Mexico.
5. Upon information and belief, the Plaintiff is a resident of Otero County, New Mexico.

6. Pursuant to 28 U.S.C. § 1332(a), diversity of citizenship exists between all parties.

7. Pursuant to 28 U.S.C. § 1446 (a), a copy of all process, pleadings, and orders received by the Defendant in the State Court Action to date are attached to this Notice as Exhibit B. *See id.* ¶¶ 15–16 (Defendant Lockett was not personally served with the summons and Complaint).

8. Plaintiff's Complaint includes two Counts, including negligence and negligence per se against Defendant Lockett. Plaintiff's Complaint generally alleges that Plaintiff suffered personal injuries and damages as a result of a motor vehicle accident involving Defendant Lockett on or around September 1, 2011 in Otero County, New Mexico. *See* Ex. B., Complaint, ¶¶ 5–13. Plaintiff also makes a request for punitive damages. *Id.* ¶ 32.

9. Pursuant to 28 U.S.C. § 1332(a), the amount in controversy for Plaintiff's claims exceeds \$75,000.00 exclusive of interest and costs. Plaintiff has alleged damages arising from the loss of "his left leg above his knee" as well as the loss of "his right leg below his knee." Defendant Lockett disputes liability; nonetheless, due to the nature of the injuries and upon information and belief, Plaintiffs' medical expenses (past and future) and other claimed damages, including Plaintiffs' request for punitive damages will exceed the amount in controversy threshold of \$75,000, exclusive of interests and costs.

10. By and through this Notice of Removal, Defendant Lockett removes all claims asserted against him on the basis of diversity jurisdiction, conferred upon this Court under 28 U.S.C. § 1332.

11. This Court has jurisdiction over Defendant Lockett in this case pursuant to 28 U.S.C. §§ 1332, 1441(a), and/or 1367.

12. This Notice of Removal is timely filed under 28 U.S.C. § 1446. This Notice of Removal is being filed with the Court within thirty days after receipt by Defendant Lockett of a copy of Plaintiffs' Complaint. *See* Lockett's Affidavit, Exhibit A, at ¶ 14–16.

13. A copy of the Docket Sheet in the State Court Action is attached to this Notice as Exhibit C.

14. Pursuant to 28 U.S.C. § 1446 (d), written notice of the filing of this Notice of Removal is being served upon the Plaintiffs on this date.

15. Defendant Lockett is filing a Notice of Filing Notice of Removal, a copy of which is attached to this Notice as Exhibit D, with the Clerk of the First Judicial District, County of Rio Arriba, State of New Mexico, pursuant to 28 U.S.C. § 1446 (d), together with this Notice.

16. Pursuant to D.N.M.LR-CIV. 81.1(a), Defendant Lockett will submit copies of the records and proceedings from the state court action within twenty-eight (28) days of filing this Notice of Removal.

WHEREFORE, the removing Defendant, Defendant Lockett, gives notice that the above-styled action, which was pending in the First Judicial District, County of Rio Arriba, State of New Mexico, as Cause No. D-117-CV-2011-00573, is removed to this Court.

Electronically Submitted,
ALLEN, SHEPHERD, LEWIS, SYRA
& CHAPMAN, P.A.

/s/ Christopher P. Winters
Daniel W. Lewis
Christopher P. Winters
Attorneys for Defendant Mark Lockett
P.O. Box 94750
Albuquerque, NM 87199-4780
(505) 341-0110

I HEREBY CERTIFY that on the 17th day of February, 2012, I filed the foregoing electronically through the CM/ECF system. AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Participants Via first class mail, postage prepaid addressed as follows:

Jason Bowles
jason@bowlesandcrow.com
B.J. Crow
Bowles & Crow, P.A.
P.O. Box 25186
Albuquerque, NM 87125-7530

/s/

Christopher P. Winters, Attorney for Defendant